

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TEXTSCAPE LLC, a New Jersey Corporation,	)	
	)	No. C09-4550 BZ
Plaintiff(s),	)	
	)	<b>ORDER SCHEDULING</b>
v.	)	<b>PRETRIAL MATTERS</b>
	)	
ADOBE SYSTEMS INC., a Delaware Corporation,	)	
	)	
Defendant(s).	)	
_____	)	

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

1. DATES

Claims Construction Hearing: **Tuesday, 9/14/2010 1:30 p.m.**

Status Conference: **Monday, 6/21/2010 4:00 p.m.**

Summary Judgment Hearing: **Wednesday, 6/2/2010 10:00 a.m.**

Summary Judgment Reply Due: **Wednesday, 5/12/2010**

Summary Judgment Opposition Due: **Wednesday, 5/5/2010**

Summary Judgment Moving Papers Due: **Wednesday, 4/14/2010**

1     2.     DISCLOSURE AND DISCOVERY

2             The parties are reminded that a failure to voluntarily  
3     disclose information pursuant to Federal Rule of Civil  
4     Procedure 26(a) or to supplement disclosures or discovery  
5     responses pursuant to Rule 26(e) may result in exclusionary  
6     sanctions. Thirty days prior to the close of non-expert  
7     discovery, lead counsel for each party shall serve and file a  
8     certification that all supplementation has been completed.

9             In the event a discovery dispute arises, **lead counsel** for  
10    each party shall meet in person or, if counsel are outside the  
11    Bay Area, by telephone and make a good faith effort to resolve  
12    their dispute. Exchanging letters or telephone messages about  
13    the dispute is insufficient. The Court does not read  
14    subsequent positioning letters; parties shall instead make a  
15    contemporaneous record of their meeting using a tape recorder  
16    or a court reporter.

17            In the event they cannot resolve their dispute, the  
18    parties must participate in a telephone conference with the  
19    Court **before** filing any discovery motions or other papers.  
20    The party seeking discovery shall request a conference in a  
21    letter filed electronically not exceeding two pages (with no  
22    attachments) which briefly explains the nature of the action  
23    and the issues in dispute. Other parties shall reply in  
24    similar fashion within two days of receiving the letter  
25    requesting the conference. The Court will contact the parties  
26    to schedule the conference.

27    3.     MOTIONS

28            Consult Civil Local Rules 7-1 through 7-5 and this

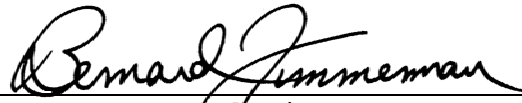
1 Court's standing orders regarding motion practice. Motions  
2 for **summary judgment** shall be accompanied by a statement of  
3 the material facts not in dispute supported by citations to  
4 admissible evidence. The parties shall file a joint statement  
5 of undisputed facts where possible. If the parties are unable  
6 to reach complete agreement after meeting and conferring, they  
7 shall file a joint statement of the undisputed facts about  
8 which they do agree. Any party may then file a separate  
9 statement of the additional facts that the party contends are  
10 undisputed. A party who without substantial justification  
11 contends that a fact is in dispute is subject to sanctions.

12 In addition to **lodging** a Chambers copy of all papers, a  
13 copy of all briefs shall be e-mailed in WordPerfect or Word  
14 format to the following address: bzpo@cand.uscourts.gov.

15 4. MEDIATION

16 By agreement of the parties, this matter has been  
17 referred to the ADR Department for a Mediation to be conducted  
18 in **JULY OR AUGUST OF 2010**, if possible. The parties shall  
19 promptly notify the Court whether the case is resolved at the  
20 Mediation.

21 Dated: March 1, 2010

22  
23 

24 Bernard Zimmerman  
25 United States Magistrate Judge

**ATTACHMENT 1**

The parties shall file a joint pretrial conference statement containing the following information:

**(1) The Action.**

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

**(2) The Factual Basis of the Action.**

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

**(3) Trial Preparation.**

A brief description of the efforts the parties have

made to resolve disputes over anticipated testimony, exhibits and witnesses.

(A) Witnesses to be Called. In lieu of FRCP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(B) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.

(C) Use of Discovery Responses. In lieu of FRCP 26(a)(3)(B), cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, from interrogatory answers, or from responses to requests for admission. Counsel shall state any objections to use of these materials and that counsel has conferred respecting such objections.

(D) Further Discovery or Motions. A statement of all remaining motions, including Daubert motions.

**(4) Trial Alternatives and Options.**

(A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

(B) Amendments, Dismissals. A statement of requested or

1                   proposed amendments to  
2                   pleadings or dismissals of  
3                   parties, claims or defenses.

4                   (C) Bifurcation, Separate Trial of  
5                   Issues. A statement of whether  
6                   bifurcation or a separate  
7                   trial of specific issues is  
8                   feasible and desired.

9                   (5) **Miscellaneous.**

10                   Any other subjects relevant to the trial of the action,  
11                   or material to its just, speedy and inexpensive  
12                   determination.  
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**ATTACHMENT 2**

**USDC**  
Case No. CV09-04550 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
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**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

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